IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 6327 of 2007(C)

PETITIONER:

PADIKKALAKANDY AGENCIES,
PARAPPANANGADI, MALAPPURAM DISTRICT,
REPRESENTED BY PROPRIETRIX K.M.RAMEESA.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENTS:
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1. **INTELLIGENCE OFFICER, SQUAD NO.II,**
   COMMERCIAL TAXES DEPARTMENT, CALICUT.

2. **ASSISTANT COMMISSIONER OF COM.TAXES,**
   TIRUR.

3. **STATE OF KERALA, REPRESENTED BY**
   COMMISSIONER OF COMMERCIAL TAXES,
   TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.6327 of 2007-C

Dated this the 26th day of February, 2007.

JUDGMENT

The petitioner is a dealer under the Kerala Value Added Tax Act. The consignment of fishnet to the petitioner was detained by the first respondent and it has been called upon to furnish security for an amount of Rs. 3,704/- by Ext.P3 notice issued under Section 47 (2) of the Kerala Value Added Tax Act, 2003. It was followed by Ext.P6 notice calling upon it to pay the amount. According to the respondents, the commodity comes under HSN Code No.5607.50.40. According to the petitioner, it is covered by HSN Code No.5607.49.00. If the petitioner's contention is accepted, it is not a taxable item and it is entitled to get complete exemption. The petitioner submits, the first respondent may be directed to take sample of the product transported by it and may be send to laboratory for analysis and find out what is the actual material that is being transported.

2. I heard the learned Government Pleader for the respondents also. The learned Government Pleader, pointed out that this dispute arises only at the stage of assessment and not now. The learned counsel for the petitioner submits that unless the sample is taken, it will not be practically possible to ascertain the nature of the goods

transported by it. The Commercial Taxes Officer (Enquiry) having jurisdiction over the matter is directed to finalise the proceedings initiated against the petitioner by issuing Ext.P3 notice as expeditiously as possible. The first respondent is directed to take the sample of the product transported by the petitioner and keep it safely in appropriate sealed cover. The same shall be forwarded along with the files leading to Ext.P3 to the Commercial Taxes Officer (Enquiry). In case that Officer does not accept the contentions of the petitioner, the dispute can be resolved by sending the sample for chemical analysis to some laboratory. The goods after taking sample shall be released to the petitioner, on paying the amount demanded, without prejudice to its contentions.

The writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS